

DOCKET NO.: NIHA-0383

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of: Csaky, et al.

Application No.: 10/588,884

Patent No. 8,039,585

Filing Date: August 27, 2007

Issue Date: October 18, 2011

For: Therapeutic Administration Of The Scrambled Anti-Angiogenic Peptide C16Y

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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PETITION UNDER C.F.R. §§ 1.181 and 1.705 TO ACCORD
FILING DATE INCORRECTLY ENTERED AND TO RECALCULATE PATENT TERM ADJUSTMENT

This is a petition to accord the above-identified application an official filing date of **August 6, 2006** for the reasons set for the below, and to recalculate the patent term adjustment accordingly.

This application was filed on August 9, 2006 as the U.S. national phase of PCT application number PCT/US04/04142. A declaration executed by each of the three inventors was submitted on this date, as was the requisite fee, a copy of the international application and a sequence listing. Thus, the application as filed on August 9, 2006 fulfilled all of the requirements of 35 U.S.C. § 371(c).

On August 27, 2007 a *supplemental* declaration was filed for this application, apparently for the sole purpose of assigning power of attorney and changing the customer number.

A filing receipt was issued on February 29, 2008 listing August 27, 2007 as the filing date of this application, however. Applicants believe that listing a filing date of August 27, 2007 on the filing receipt for this application was done in error, and that the correct filing date is August 9, 2006, the date on which the application was filed with an executed declaration, and on which all initial formalities were

completed. Thus, the correct 371(c) completion date for this application was August 9, 2006, not August 27, 2007.

With regard to the patent term adjustment calculation, the office has awarded a total of 1003 days of patent term adjustment to this case. However, we believe the patent is properly due a total of 1393 days. The first office action (a restriction requirement) was mailed on March 30, 2010, a date that was 909 days more than 14 months from the correct 371(c) completion date. However, the office, relying on the incorrect filing date, only accorded 519 days of patent term adjustment for this delay. If the correct filing date is accorded to the application, the patent term adjustment is correctly calculated by adding 909 days of A delay to 795 days of B delay (= 1704 days), then subtracting 228 days of overlap between the A and B delays, together with 83 days of applicant delay (a total of 311 days), yielding a total patent term adjustment of 1393 days.

Applicants accordingly ask the Office to: [1] take the steps necessary to correct the filing date for this application; and [2] accordingly recalculate the patent term adjustment in accordance with a filing of August 9, 2006.

The Commissioner is hereby authorized to charge any deficiency or credit any overpayment of the fees associated with this communication to Deposit Account No. 23-3050.

Respectfully submitted,

Date: December 19, 2011

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